



Town of Arlington, Massachusetts
730 Massachusetts Ave., Arlington, MA 02476

Phone: 781-316-3000

webmaster@town.arlington.ma.us

Redevelopment Board Minutes 07/28/2008

Arlington Redevelopment Board
 Minutes of July 28, 2008

Members Present: Christopher Loreti (Acting Chair)
 Roland Chaput
 Bruce Fitzsimmons

Also Present: David Berry (Acting Secretary ex officio)

Others Present: Douglas Manz, JPI; Joshua Davis, Attorney, Freeman, Davis & Stearns (representing JPI)

Chris Loreti, Acting Chair, called the meeting to order at 7:07 p.m.

Chris Loreti asked Douglas Manz to explain JPI's request to extend the deadline by which JPI must apply and pay the permit fee for the building permits for the Symmes Hospital site development project. The request is to extend this deadline from July 30, 2008 to August 30, 2008.

Douglas Manz, briefly referring to the March permit deadline extension, explained that the lending market has been "upside down" and very volatile during the current economic downturn. As a result, the loan offers from the previous lenders, Citibank and Wachovia, had been terminated about three months ago. JPI thus had had to seek and obtain a loan offer from a new lender. Douglas Manz also noted that JPI has actually obtained and paid the fees for some permits (demolition, blasting, and foundation permits), and has been continuously working on the construction covered by these permits. JPI needs the time provided by the requested extension to align the closing on the new loan with the remaining permit applications and fees.

Bruce Fitzsimmons inquired about the status of the loan process. Douglas Manz said that everything is in place for the loan, except for the legal paperwork. He added that JPI already has the loan for the land, and the letter of credit has been extended; this new loan is the construction loan. With this new loan, which he reiterated is in place with no major conditions, all borrowing will be in place. The closing date on the new loan has yet to be set. In response to a question, Douglas Manz said that there probably will be no impact on the construction schedule due to this extension, adding that a change in the blasting contractor had set the schedule back a bit.

Roly Chaput asked which permits had already been issued, and Douglas Manz said that the demolition and blasting permits, the foundation permits, and the building permits for one townhouse cluster were in hand and paid for, leaving a permit fee of \$650,000 to be paid. He added that these permits would allow the work covered by them to proceed into September or October. There would be no slowdown of construction caused by this extension; JPI was simply requesting that the payment of the remaining permit fees be delayed until August 30th.

Roly Chaput noted that the Town Treasurer had provided the ARB with an 8.87% interest rate to be charged on the delayed permit fee payment. The Treasurer had also provided support for charging 16%, the Town's rate for late taxes and other similar fees, but noted that it is up to the ARB to determine the final rate. Roly Chaput asked if the 8.87% rate would be acceptable to JPI. Douglas Manz said that JPI has no problem with making the Town whole in the delayed payment. He added that the 8.87% is acceptable, assuming that it is the rate that the Town would get if it invested the money. However, JPI would have a problem with 14% or 16%, since, if the ARB approved this extension, the payment would not be late. Roly Chaput, while understanding the Treasurer's rationale for the higher rate, agreed that the payment was not a tax, and thus should not be subject to the higher rate. Citing an email on the subject from Charlie Foskett, he agreed that this is a unique project, and the Town should make a special effort to ensure its success.

Chris Loreti inquired again about the firmness of the commitment from the lender, and which party had pulled out of the previous loan offer. Douglas Manz reiterated that JPI and the lender are beyond the risk stage of this offer. He was not sure who had pulled out of the previous offer, but Joshua Davis added that it was probably the lender, noting how fickle lenders are now, due to the volatile loan market.

Chris Loreti asked why the permit fees have to come out of the loan. Douglas Manz explained that except for the land, much of the funds needed for the project are coming from cash that JPI has on hand. He noted that, with the new loan market, lenders are now offering only 60% loans, rather than the previous 75% loans, meaning that JPI has to supply even more of its cash. Chris Loreti asked if there was no other source for the permit fees, if JPI did not have other lines of credit. Douglas Manz emphasized that, company-wide, JPI (and most other development companies) are stretched to the limit, using as much reserve cash as possible. Also, he explained, JPI simply can't obtain any more loans or lines of credit due to the credit crunch. Joshua Davis noted that JPI's situation is not unique—the cash has been sucked out of the market.

Chris Loreti, referring to the building permit for which JPI has applied, asked about the mechanical system permits. Douglas Manz explained that the practice is that the developer applies for the overall building permits, but the contractors and subcontractors apply for the individual trades permits, such as electrical, plumbing, etc. The Building Inspector has no problem with this process.

Chris Loreti also asked about the possibility of JPI challenging the size of the building permit fee. Douglas Manz responded that JPI would not challenge the total building permit fee as determined by the Building Inspector. He noted, however, that JPI's actual construction expenses as submitted by the contractors were less by about \$40,000 or \$50,000 than the estimated construction expenses upon which the fee is based. Douglas Manz wanted to ensure that JPI was credited with all the fees it had already paid for the demolition and blasting permits, the foundation permits, and the building permits for one townhouse cluster. Bruce Fitzsimmons noted that correspondence from Kevin O'Brien cited the figure of \$734,000 as the total amount of the fees. Douglas Manz affirmed this amount, and reiterated for the record that his understanding is that the remaining amount of permit fees is \$650,000.

Chris Loreti was concerned with the relatively late request for the extension. Doug Manz admitted that the request was late, but explained that JPI judged that it would be worth the time to make every effort to find an alternative to making such a request. He regretted that JPI had not kept the Town in the loop during the effort, and expressed his and JPI's sincere appreciation to the ARB for holding this special meeting. In response to Chris Loreti, he emphasized that JPI did not intend, nor did it want, to return in 30 days with another extension request. Based on his experience as a real estate attorney, Bruce Fitzsimmons confirmed that the volatile loan market could have been such as to reasonably cause the late notice.

On motion of Bruce Fitzsimmons, seconded by Roly Chaput, the ARB voted, 3-0, to set the interest rate to be applied to the delayed permit fee payment at 8.87% annually.

This amount will be inserted into the letter of agreement drafted by Kevin O'Brien and Town Counsel. David Berry suggested that Chris Loreti sign the letter as changed, but Chris Loreti suggested, and Douglas Manz agreed, that Kevin O'Brien sign it. It was thus agreed that, as with the March extension, the letter would be signed by Kevin O'Brien, and then by JPI, after Kevin O'Brien returns from vacation.

On motion of Roly Chaput, seconded by Bruce Fitzsimmons, the ARB voted, 3-0, to approve the letter of agreement as drafted, with the 8.87% inserted, for execution by Kevin O'Brien and JPI. The text of this letter of agreement is as follows:

"Symmes Redevelopment Associates has requested to change the deadline for the issuance of all building permits for the Symmes Residential Component Improvements from July 30, 2008 to August 30, 2008 and has agreed to pay interest at the rate of 8.87% per annum for the period beginning July 31, 2008 through the date that the permits are issued and the building permit fee is paid.
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Please be advised that by a vote at its meeting of July 28, 2008, the Arlington Redevelopment Board approves the August 30, 2008 deadline for the issuance of building permits, and notwithstanding the language of Section 5(a) of the Land Disposition Agreement, finds Symmes Redevelopment Associates to be in compliance with said document."

The meeting adjourned at 7:45 p.m.

Respectfully submitted,
David Berry (Acting Secretary ex officio)